

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Expanding the Economic and Innovation)	Docket No. 12-268
Opportunities of Spectrum Through Incentive)	
Auctions)	
)	

REPLY COMMENTS OF POLNET COMMUNICATIONS, LTD.

Polnet Communications, Ltd. (“Polnet”), the licensee of Class A broadcast television station WPVN-CD, Chicago, Illinois (Fac. ID 168237) and several radio broadcast stations, hereby submits reply comments in response to the Commission’s *Notice of Proposed Rulemaking* (“*NPRM*”) in the above-captioned proceeding.¹

The Commission should reject the *NPRM*’s current proposal and equitably protect and evaluate all digital Class A facilities as of the date the reverse auction commences. The *NPRM* proposes to evaluate for auction purposes and protect in repacking the facilities of Class A stations which completed their digital transition by February 22, 2012 as of that date, while those stations which did not complete their digital transition, but do so before the date the reverse auction commences, will be evaluated and protected as of the reverse auction date.² The law does not tolerate disparate treatment of similarly-situated entities,³ and the Commission’s divergent valuation methodology is based upon a distinction without a difference.

¹ *In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, 27 FCC Rcd. 12357 (2012) (“*NPRM*”).

² *See NPRM*, ¶¶ 80, 115.

³ *Melody Music, Inc. v. FCC*, 345 F.2d 730, 733 (D.C. Cir. 1965); *see also FEC v. Rose*, 806 F.2d 1081, 1089 (D.C. Cir. 1986) (“[A]n agency’s unjustifiably disparate treatment of two similarly situated parties works a violation of the arbitrary-and-capricious standard.”).

Polnet agrees with the FCC that “it would be unfair to those Class A licensees that have yet to convert digital operation, and that have made transition plans in reliance on the rules” to ignore the value of investment made in station operations after February 22, 2012.⁴ Likewise, to level a *de facto* punishment on early digital Class A adopters by eliminating the value of station improvements made post-February 22, 2012 would be equally unfair to those stations which invested in upgraded facilities in reliance on the fundamental Commission tenet for broadcasters to serve the public interest. The FCC must “do more than enumerate factual differences,” and the *NPRM* fails to justify why early DTV adopters should be disadvantaged against their Class A competitors as part of the auction and repacking processes.⁵ If anything, the *NPRM* demonstrates that the FCC has the discretion under the Spectrum Act and the practical flexibility to evaluate and to protect *all* Class A stations at the time the reverse auction commences.

Moreover, the relied-upon rules to which the *NPRM* refers incentivized the very early DTV adoption which the *NPRM* now seeks to penalize. There, the FCC made certain that “stations should not be penalized for getting an early start on the transition process” and that the September, 2015 conversion deadline would “encourage stations to file applications for their digital facilities as soon as possible.”⁶ Polnet agrees with Casa En Denver that “the Commission should continue to provide licensees with incentives to continue to improve digital services via facilities upgrades prior to the commencement of the reverse auction process.”⁷

⁴ *NPRM*, ¶ 80.

⁵ *Burlington N. & Santa Fe Ry. Co. v. Surface Transp. Bd.*, 403 F.3d 771, 777 (D.C. Cir. 2005).

⁶ *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, Second Report and Order, 26 FCC Rcd 10732, ¶ 14 (2011) (“*LPTV DTV Second Report and Order*”). Commission policy has consistently sought “to hasten the transition of low power television stations to digital operations.” *Id.*, ¶ 3.

⁷ Comments of Casa En Denver, at 3.

To truly avoid inequity and unfair treatment, the Commission should protect and evaluate all Class A station facilities as of the date of reverse auction. The *NPRM*'s proposed policy will inevitably discourage auction participation by Class A stations, lower the supply of available spectrum, and raise the risk of auction failure.

Respectfully submitted,
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